

fund transfer. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391 as amended (26 U.S.C. 6301, 6311, 6302))

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§ 24.277 Date of mailing or delivering of returns.

(a) When the proprietor sends the Excise Tax Return, ATF F 5000.24, with or without remittance, by United States mail, the official postmark of the United States Postal Service stamped on the cover of the envelope in which the return was mailed is considered the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. When the postmark on the cover is illegible, it is the proprietor's responsibility to prove when the postmark was made.

(b) When the proprietor sends the tax return by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, is treated at the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

(Approved by the Office of Management and Budget under control numbers 1512-0467 and 1512-0492)

§ 24.278 Tax credit for certain small domestic producers.

(a) *General.* In the case of a person who produces not more than 250,000 gallons of wine during the calendar year, there shall be allowed as a credit against any tax imposed by Title 26, U.S.C. (other than Chapters 2, 21 and 22), an amount computed in accordance with paragraph (d) of this section, on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed during such year for consumption or sale. Such credit applies only to wine which has been produced at a qualified bonded wine prem-

ises in the United States. The small wine producer's tax credit is available only to eligible proprietors engaged in the business of producing wine. A proprietor who has a basic permit to produce wine but does not produce wine during a calendar year may not take the small producers' wine tax credit on wine removed during such calendar year. A proprietor who has obtained a new wine producers' basic permit may not take the small producers' wine tax credit on wine removed until wine is produced by such proprietor. "Wine production operations" include those activities described in paragraph (e) of this section.

(b) *Special rules relating to eligibility for wine credit—(1) Controlled groups.* For purposes of this section and § 24.279, the term "person" includes a controlled group of corporations, as defined in 26 U.S.C. 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" wherever it appears. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. Production and removals of all members of a controlled group are treated as if they were the production and removals of a single taxpayer for the purpose of determining what credit may be used by a person.

(2) *Credit for transferees in bond.* A person other than an eligible small producer (hereafter in this paragraph referred to as the "transferee") shall be allowed the credit under paragraph (a) of this section which would be allowed to the producer if the wine removed by the transferee had been removed by the producer on that date, under the following conditions:

(i) Wine produced by any person would be eligible for any credit under this section if removed by such person during the calendar year,

(ii) Wine produced by such person is removed during such calendar year by the transferee to whom such wine was transferred in bond and who is liable for the tax imposed by this section with respect to such wine, and

(iii) Such producer holds title to such wine at the time of its removal and

provides to the transferee such information as is necessary to properly determine the transferee's credit under this paragraph.

(iv) At the time of taxable removal, the following information shall be provided to the transferee by the producer, in writing, and the producer and transferee shall each retain a copy with the record of taxpaid removal from bond required by § 24.310:

(A) The names of the producer and transferee;

(B) The quantity and tax class of the wines to be shipped;

(C) The date of removal from bond for consumption or sale;

(D) A confirmation that the producer is eligible for credit, with the credit rate to which the wines are entitled; and

(E) A confirmation that the subject shipment is within the first 100,000 gallons of eligible wine removed by (or on behalf of) the producer for the calendar year.

(c) *Time for determining and allowing credit.* The credit allowable by paragraph (a) of this section shall be determined at the same time as the tax is determined under 26 U.S.C. 5041(a), and shall be allowable at the time any tax described in paragraph (a) of this section is payable. The credit allowable by this section is treated as if it constituted a reduction in the rate of such tax.

(d) *Computation of credit.* The credit which may be taken on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed for consumption or sale by an eligible person during a calendar year shall be computed as follows:

(1) For persons who produce 150,000 gallons or less of wine during the calendar year, the credit is \$0.90 per gallon for wine (\$0.056 for hard cider) eligible for such credit at the time it is removed for consumption or sale;

(2) For persons who produce more than 150,000 gallons but not more than 250,000 gallons during the calendar year, the credit shall be reduced by 1 percent for every 1,000 gallons produced in excess of 150,000 gallons. For example, the credit which would be taken by a person who produced 160,500 gallons of wine and hard cider during a cal-

endar year would be reduced by 10 percent, for a net credit against the tax of \$0.81 per gallon for wine or \$0.0504 for hard cider, as long as the wine or hard cider was among the first 100,000 gallons removed for consumption or sale during the calendar year.

(e) *Definitions*—(1) *Production.* For the purpose of determining if a person's production is within the 250,000 gallon limitation, in addition to wine produced by fermentation, production includes any increases in the volume of such wine due to the winery operations of amelioration, wine spirits addition, sweetening, and the production of formula wine. Production of champagne and other sparkling wines is not excluded for purposes of determining whether total production of a winery exceeds 250,000 gallons. Production includes all wine produced at qualified bonded wine premises within the United States and wine produced outside the United States by such person.

(2) *Removals.* For the purpose of determining if a person's removals are within the 100,000 gallon limitation, removals include wine removed from all qualified bonded wine premises within the United States by such person. Wine removed by a transferee in bond under the provisions § 24.278(b)(2) will be counted as a removal by the small producer who owns such wine, and not by the transferee in bond.

(f) *Preparation of tax return.* A person who is eligible for the credit shall show the amount of wine tax before credit on the Excise Tax Return, ATF F 5000.24, and enter the quantity of wine subject to credit and the applicable credit rate as the explanation for an adjusting entry in Schedule B of the return for each tax period. Where a person does not use the credit authorized by this section to directly reduce the rate of Federal excise tax on wine, that person shall report on ATF F 5000.24 where such credit will be, or has been, applied. Where a transferee in bond takes credit on behalf of one or more small producers, the names of such producers, their credit rate, and the total credit taken on behalf of each during the tax return period shall be shown in schedule B.

(g) *Denial of deduction.* Any deduction under 26 U.S.C. chapters 1-6, with respect to any tax against which the credit is allowed under paragraph (a) of this section shall only be for the amount of such tax as reduced by such credit.

(h) *Exception to credit.* The appropriate ATF officer shall deny any tax credit taken under paragraph (a) of this section where it is determined that the allowance of such credit would benefit a person who would otherwise fail to qualify for the use of such credit. (26 U.S.C. 5041(c).)

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§ 24.279 Tax adjustments related to wine credit.

(a) *Increasing adjustments.* Persons who produce more wine than the amount used in computation of the credit, or who lose eligibility by not producing during a calendar year, must make increasing tax adjustments. Where an increasing adjustment to a person's tax return is necessary as a result of an incorrect credit rate claimed pursuant to § 24.278, such adjustment shall be made on Excise Tax Return, ATF F 5000.24, no later than the return period in which production (or the production of the controlled group of which the person is a member) exceeds the amount used in computation of the credit. If the adjustment is due to failure to produce, it shall be made no later than the last return period of the calendar year. The adjustment is the difference between the credit taken for prior return periods in that year and the appropriate credit for such return periods. The person shall make tax adjustments for all bonded wine premises where excessive credits were taken against tax that year, and shall include interest payable. In the case of a person who continued to deduct credit after reaching the 100,000 gallon maximum during the calendar year, the adjustment is the full amount of excess credit taken, and shall include interest payable under 26 U.S.C. 6601 from the date on which the excess credit was

taken, and may include the penalty payable under 26 U.S.C. 6662, at the discretion of the appropriate ATF officer. The appropriate ATF officer will provide information, when requested, regarding interest rates applicable to specific time periods, and any applicable penalties. In the case of a controlled group of bonded wine premises who took excess credits, all member proprietors who took incorrect credits shall make tax adjustments as determined in this section. In the case of a small producer who instructed a transferee in bond to take credit as authorized by § 24.278(b)(2), and subsequently determines the credit was less or not applicable, such producer shall immediately inform the transferee in bond, in writing, of the correct credit information. The transferee shall make any increasing adjustment on its next tax return based on revised credit information given by the producer or by an ATF officer.

(b) *Decreasing adjustments.* Where a person fails to deduct the credit, or deducts less than the appropriate credit provided for by § 24.278, during the calendar year, a claim may be filed for refund of tax excessively paid. Such claims will be filed in accordance with § 24.69 of this part. In the case of wine removed on behalf of a small producer by a transferee in bond, if the transferee in bond was instructed to deduct credit and failed to deduct credit or deducted less than the appropriate credit and was later reimbursed for the tax by such producer, such transferee may file the claim. The provisions of 26 U.S.C. 6423 and 27 CFR part 70, subpart F, will apply, and the producer and transferee in bond must show the conditions of § 24.278(b)(2) were met. (26 U.S.C. 5041(c).)

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TRANSFER OF WINE IN BOND

§ 24.280 General.

Wine may be removed for transfer in bond, from one bonded wine premises to another bonded wine premises or to a distilled spirits plant. For bulk wine